RE ESTATE OF TAN SRI DATUK SYED KECHIK, DECEASED; PUAN SRI SOFIAH MOO & ORS (PETITIONERS)

HIGH COURT MALAYA, KUALA LUMPUR
LEE SWEE SENG JC
[PETITION FOR LETTERS OF ADMINISTRATION NO: S31-668-2009]
11 OCTOBER 2010

SUCCESSION: *Letters of administration - Competing applications - Petition by widow and two daughters - Caveat against grant of administration filed by son - Joint administration, whether proper - Considerations - Rights of all persons interested in estate - Probate and Administration Act 1959, s. 30 - Whether any special circumstances to exclude caveator - Expeditious and economical administration - Wishes of majority - Objectionable persons - Syariah, 'faraid' certificate and 'harta sepencarian'*

This was an application by the deceased's widow and two daughters ('the petitioners') for the grant of letters of administration respecting the deceased's estate ('the estate') of which the petitioners were also the beneficiaries. A caveat against the grant of administration, on the other hand, was filed by the deceased's son from a previous marriage ('the caveator'). The caveator was also a beneficiary under the estate. It was agreed between the parties that the sole issue for determination was whether there should be a joint administration of the estate as between the petitioners and the caveator.

Held:

(1) The caveator's share in the estate is substantial, whether it be 14/32 share as according to the caveator's Faraid certificate and confirmed by his syariah expert or 21.88% as proposed by the petitioners' expert. Hence, very strong and cogent reasons would be required to disqualify the caveator from being a co-administrator of the estate. There were also no special circumstances – regard being had to s. 30 Probate and Administration Act 1959 ('PAA59') – to exclude the caveator. The fact that the caveator had a failed business or that he lacked the expertise and experience to manage the estate were not valid reasons to exclude him from administration. (paras 18-24)

(2) Having the caveator as a joint-administrator, rather than excluding him, would promote the 'expeditious and economical administration' of the estate. (paras 26-29)

(3) Under a joint administration of the estate, remedies (such as costs or removal of administrator) would still be available to the petitioners should the caveator be inclined to object to every act of the petitioners so as to defeat the whole administration. (paras 30-35)

(4) In considering the appointment of administrators, the interests and wishes of the majority beneficiaries will generally be upheld. However, where the voice of a disenfranchised party, such as the caveator herein, ought to be heard and where the harm he could cause is very much buffered by the strength, skill and stature of the other party, such as the petitioners herein, the inclusion of the disenfranchised party, *ie*, the caveator, as a co-administrator would not jeopardise or derail the actions of the other party, *ie*, the petitioners, in the due administration of the estate. (paras 36-40)

(5) Generally, a person such as the caveator could be excluded from administration if he is personally objectionable to all the other persons entitled to a share in the estate. However, this principle of excluding the objectionable party must give way to the principle of promoting greater transparency and of discovering the true extent of a deceased person's estate and assets (such as those of the deceased herein which are still in dispute). This overriding principle encapsulated in s. 30 PAA 59 takes priority. (paras 41-44)

[Letters of administration granted jointly to both the petitioners and the caveator.]

Case(s) referred to:

Bell v. Timiswood 2 Phill Ecc 22 ***(not foll)***
Dalam Harta Pesaka Ngau Ken Lock (Deceased) v. Ngau Voon Kiat [2002] 1 LNS 144 HC ***(dist)***
Dampier v. Colson 2 Phill Ecc 53 ***(dist)***
Elwes v. Elwes 2 Lee, 572 ***(refd)***
In the goods of Sarah Stainton [1871] LR 212 ***(refd)***
Iredale v. Ford 1 SW TR 306 ***(dist)***
Mercer v. Morland 2 Lee 498 ***(refd)***
Re Grundy [1868] LR 1 P&D 459 ***(refd)***
Sanford v. Vaughan 1 Phill Ecc 126 ***(not foll)***
Yap Kee Par v. Molly Yap & Ors [1996] 1 CLJ 374 ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 3(1)
Probate and Administration Act 1959, ss. 4(1), 30
Rules of the High Court 1980, O. 72

Other source(s) referred to:
Williams, Martimer and Sunnucks Executors, Administration and Probate, 16th edn, 1982, p 324

For the petitioners - Dato' Vijay Kumar Natarajan (Uma Parvathy Thothathri & Steven How with him); M/s Kumar Jaspal Quah & Aishah
For the caveator - Pawancheek Marican (Zulkifli Che Yong & Azmi Tan Sri Rais with him); M/s Zulkifli Yong Azmi & Co

Reported by Gan Peng Chiang

JUDGMENT

Lee Swee Seng JC:

Prologue

[1] Some died poor. Some died rich. The fact remains that we all have to leave everything behind when we should die one day. Some would leave behind a legacy of faith, hope and love; others a legacy of wealth.

[2] Sometimes a sad thing happens: children, bickering and battling over who should administer the estate of the deceased father or spouse, what constitutes the asset of the deceased. Such is the scenario that has come before the court for decision.

Parties

[3] This is an application for Grant of Letters of Administration in respect of the estate of the late Tan Sri Datuk Syed Kechik @ Syed Bakar bin Syed Mohamed who passed away on 10 April 2009.

[4] The petitioners are the deceased lawful widow, Puan Sri Sofia Moo (the 1st petitioner) and his two daughters, Puan Sharifah Munirah (the 2nd petitioner) and Puan Sri Sharifah Zarah (the 3rd petitioner).

A **[5]** The beneficiaries of the estate of the deceased are the petitioners as well as a son through a previous marriage, which had been dissolved, by the name of Syed Gamal bin Syed Kechik (the caveator).

B **[6]** Now the parties to the dispute are as follows: the 1st petitioner as the lawful widow of the late Tan Sri Datuk Syed Kechik @ Syed Bakar bin Syed Mohamed and the 2nd and 3rd petitioners, as the daughters of the deceased on the one hand and on the other hand the caveator, as the son of the deceased, ie,
C 'the son', as in the surviving son from a previous marriage of the deceased to the first wife. The petitioners had filed a petition for the grant of letters of administration, annexing a list of assets to be administered. The caveator had filled a caveat under the Rules of the High Court (RHC), such that no grant of administration
D can be made without notice to him.

Problem

[7] The caveator had filed a summons in chambers in court encl. 7, and upon realising (as advised by his solicitors) that he
E should actually go under O. 72 RHC, he filed a fresh writ under Writ No. S-22-443-2010.

[8] There was no warning filed by the petitioners for reasons given that the petitioners are not disputing that the caveator has
F an interest as a beneficiary of the estate of the deceased father.

[9] In the last hearing before the court, the court has recorded the following words:

> … that parties agree that the court would decide on just that sole
G question on who are to be administrators of the estate of the deceased here, the deceased being Tan Sri Syed Kechik @ Syed Bakar bin Syed Mohammad.

Principles

H **[10]** The court has considered the arguments of both parties, and the court must commend both counsel for the in-depth research that they have done into this subject.

I

Rights Of The Petitioners And Caveator To Be Administrators Of The Deceased's Estate

[11] Both parties are in agreement that both the petitioners and the caveator have a right to administration of the estate quest are all beneficiaries of the deceased estate. The petitioners' counsel submitted that in the circumstances of the case the court should exercise its discretion not to allow the caveator to be a co-administrator of the estate.

[12] The 3rd petitioner gave evidence *via* affidavit as agreed by both the parties with respect to how evidence is to be adduced with respect to assisting the court to determine the single issue as to who the grant of administration to the estate should be given. Her evidence on why the caveator should be excluded from administration can be summarised as follows:

1. The caveator was not able to distinguish between company matters and personal estate matters.

2. The caveator had no regard for Civil Law and only considered himself bound by Syariah Law.

3. The caveator was a failed businessman whose only claim as regards business acumen is that he owns a cyber cafe in Kelantan.

4. There is much animosity on the part of the caveator against the petitioners and even the deceased who he claimed had discriminated against him through his life time.

5. The petitioners were against joint administration and they urged the court not to force the same upon them.

6. That under the Faraid Certificate, the petitioners collectively held a majority of the shares of the estate.

7. That if the court were to accept the 1st petitioner's rights under 'harta sepencarian', then the caveator's share would be around 21%.

8. The petitioners also gave evidence that the standing of the 3rd petitioner in Malaysian society could not be ignored and it would be highly inconceivable that she or any of the petitioners would conduct themselves in a manner that would bring them into disrepute or subject them to scandal.

[13] The court finds that these reasons given are not sufficiently strong to deny the caveator the right to the administration of his late father's estate. Neither are they cogent and valid reasons to deny the caveator, the only son of the deceased his right to co-administer the estate together with the petitioners. If indeed it is true that the caveator has a problem distinguishing between company matters and personal estate matters, this can be overcome by his solicitors explaining to him. It may well be that the distinction between the two and the divide and dividends that may flow out of the distinction and differentiation may be more than meet the eyes. If that be so then failing the agreement of the parties the court is always there to hear the disputes of the parties. Already we were told there is a proceeding afoot with respect to the caveator's interest or otherwise in the companies left behind by the deceased.

[14] With respect to the caveator considering himself bound to the Syariah law and not the Civil Law, I find no justification for this conclusion. One system of law need not be pitted against another. Parties are in agreement that the percentage and proportion of the division and distribution of the deceased, being a Muslim, would be determined by Syariah law. Even here parties cannot agree on what is the percentage or proportion to be divided and distributed to each person as beneficiary. Is it because the law is vague or that man's interpretation of it differs? This is something that the Syariah Court will have to decide when issuing the Faraid Certificate. This court does not have to decide on this issue. As pointed out at the outset this court has been asked, by consent of the parties, to decide on who should the grant of the administration of the estate be given.

[15] Whilst on this subject I might as well said that the caveator had obtained an *ex parte* Faraid Certificate from the Syariah High Court on 31 July 2009 wherein the residuary estate of the Deceased is to be distributed in the following shares:

(i)	1st petitioner	–	4/32 share (12.5%)
(ii)	2nd petitioner	–	7/32 share (21.87%)
(iii)	3rd petitioner	–	7/32 share (21.87%)
	Total	–	18/32 share
(iv)	Caveator	–	14/32 share (43.75%)

[16] The above division and distribution was agreed by the expert witness of the caveator, Associate Professor Mohd Ridzuan Awang of the Universiti Kebangsaan Malaysia. However the expert called by the petitioners, Assistant Professor Dr Tajul Aris Ahmad Bustami of the International Islamic University, Malaysia opined that the spouse of the deceased would be entitled from 1/3 to 1/2 of the deceased's assets acquired during the marriage, be it movable or immovable under the concept of 'harta sepencarian'. Dr Tajul further stated that this does not form part of the estate which again is distributed pursuant to the Faraid Certificate.

[17] The 3rd petitioner said that her mother, the 1st petitioner herein, is in the process of seeking her entitlement under 'harta sepencarian' in the Syariah Court and that she is asking for her full entitlement of half of the assets as she had assisted her late husband in the business and was a director in his business. The 3rd petitioner went on to state that based on what her expert said and her calculation, her mother first takes up to 50% of all assets and then the balance is then distributed under the proportion set out in the Faraid Certificate therefore effectively the distribution would be as follows:

(i) 1st petitioner 50% + 6.25% = 56.25%

(ii) 2nd petitioner 10.985%

(iii) 3rd petitioner 10.985%

Total:	78.22%

(iv) Caveator 21.88%

[18] The court finds that whether it be expressed in fraction or in percentage the proportion of each person's share in the estate of the deceased, the caveator's share is still very substantial, whether it be 14/32 according to the caveator's Faraid Certificate and confirmed by his expert or that of 21.88% as stated by the petitioners' expert. Thus very strong, cogent and valid reasons must be given to disqualify the caveator from being a co-administrator in the administration his the estate of the deceased. At this point I do not have to express which of the two expert opinions to follow and neither is it something within my purview and jurisdiction.

[19] What falls for my decision is why and whether under the circumstances of the case the caveator should be excluded as an administrator of his late father's estate as provided for under the Probate and Administration Act 1959. Why should anyone say that because collectively they have a bigger proportion as the petitioners are saying here, then the caveator should be excluded? s. 4(1) of the Act provides that representation shall not be granted to more than four persons in regard to the same property. There is enough room for every beneficiary because the deceased left behind four beneficiaries that is the wife and two daughters and a son. Indeed why should the caveator not be included in the four as not only is he the only son and a beneficiary of a substantial portion of his father's estate but also his expressed feeling that he has been disenfranchised all this while and he harbours doubt that his voice will ever be heard at all in the administration of his father's estate.

[20] Under s. 30 of the Act it is provided that in granting administration the court shall have regard to the rights of all persons interested in the estate of the deceased person. The proviso to s. 30 reads:

> Provided that, where the deceased died wholly intestate as to his estate, administration shall, if application is made for the purpose, be granted to some one or more of the persons interested in the residuary estate of the deceased, unless by reason of insolvency of the estate or other **special circumstances** the Court thinks it expedient to grant administration to some other person. (emphasis added)

[21] This court finds no special circumstances to exclude the caveator from the administration of the estate. If at all the reverse is true that there is every reason for his inclusion in the administration of his father's estate. The fact that there is animosity between the parties is no good reason as parties can if they cannot sit down together to discuss and deliberate on matters of administration, they can choose the vehicle of going through their respective lawyers as like all lawyers, trained in the art of relating to their learned colleagues in the Bar with much candour in a manner befitting those steeped in cordial and civic language. They are more than mere conduits of communication between parties that may be estranged; they play the role of being a cushion between conflicting factions, sometimes as mediator and

peace-makers in their efforts to help parties look at the big picture and to look in the same direction together though they may not always see eye-to-eye and may even avoid eye-contact when in the same room! A

[22] To exclude the caveator would be to further drive a wedge in their relationship with one another. If at all they cannot come together when their father was alive, at least they should now come together to share in the bounties that their father had left behind for them. In that narrow sense they can all be united in the common objective of unlocking their late father's assets to bless the generations that will come after them and those around them. B C

[23] The fact that the caveator had failed in business is hardly a reason for excluding him from his rightful and responsible role in administration of his father's estate. Most of us have tasted the bitterness of failures before but as we have often experienced, failures are the fertilisers for growth and who are we to say that one is more successful than the other because success can be measured by so many criteria and the balance is our bank accounts is just one method of measuring the stature of a man. We are all more than what our bank balances say of us for the truly important things in life cannot be measured by money. A man's life has to consist of more than his possessions. D E

[24] Neither is the fact that the caveator lacks the necessary expertise and experience in managing the business affairs of the deceased father a factor against him being made a co-administrator of the father's estate. He is not required and will not be allowed any executive function as he is not a director of the companies run by the petitioners now that the deceased is no more. All that is required to be done is to transfer the assets be they moveable or immoveable into the name of the caveator as a beneficiary according to his proportion. If that can be a problem, then it is a problem that will be faced even if the petitioners are the sole administrators. F G H

[25] This court can take cognisance of the fact that the petitioners are all women of substance, of standing, stature and status in society. At the risk of saying the obvious, the doors of our courts are open to all, whether one be a successful and sophisticated merchant or a struggling and simple mendicant. The court does not favour the rich nor is it bias towards the poor. I

Everyone is treated equally irrespective if his standing, stature and status in society. Everyone is equal before eyes of the law and none are more equal than others. This court proceeds on the premise that all administrators will be honest, responsible and accountable in the way that they administer the estate unless by their conduct they show themselves to be otherwise. This court has no doubt that the petitioners would administer the estate of the deceased properly. The question is would the inclusion of the caveator dilute, disturb and distract that? It would not be possible for nothing can be done without the concurrence of all the administrators. If at all there will the element of greater transparency making patent what is latent and thus promoting goodwill between parties not so accustomed to it.

The Principle That The Estate Must Be Administered Expeditiously And Economically

[26] In the *Dalam Harta Pesaka Ngau Ken Lock (Deceased) v. Ngau Voon Kiat* [2002] 1 LNS 144, Ramly J (as he then was) accepted this as an established principle quoting *Re Grundy* [1868] LR 1 P&D 459. His Lordship also quoted Vincent Ng J (as he then was) in *Yap Kee Par v. Molly Yap & Ors* [1996] 1 CLJ 374 p 377.

> One object which the court keeps in view is the expedious and economical administration of estates of deceased persons (see *Re Grundy* [1868] LR 1 P & D 459). No broad rule of law can be laid down as to what the special circumstances directly affecting the administration of the estate (see *Re S (Deceased)* [1967] 2 All ER 150, In the *Goods of Knight* [1939] 2 All ER 928). Indeed in In the *Estate of Biggs* [1966] All ER 358, a grant of LA to the deceased's niece was made, passing over an executor who had intermeddled but refused to prove the will. And, in *Re Estate of Newsham* [1966] 3 All Er 681, a grant was made, passing over a widow, so as not to prejudice an insurance claim (see also *G Raman's Probate And Administration in Singapore and Malaysia, Law and Practice* at p 51).

[27] Counsel for the petitioners submitted that it has been shown that the caveator will be inclined to disrupt and hinder the smooth administration of the estate. Due to his failure to comprehend the difference between the estate and the company founded by the deceased and his strong belief that he is only bound by Syariah Law, decisions of the administrators will be dead locked and the

administrators will have to constantly seek directions from the court. This will not allow the estate to be administered expeditiously or economically.

[28] I do not think that previous antecedents will presently affect future conduct of the proceeding. It is to nobody's advantage if both sides cannot agree. If the fear is that the caveator would jam up the petitioners at every turn, I think the reverse would probably be true, that if he is excluded, he would harbour doubts and fears that may precipitate in him having to come every now and then for an order for an account to be rendered as to the progress made in the administration of the estate. If he is part of the team that administers the estate he would be kept in the know and having the knowledge that nothing can be done without communicating with him or getting his concurrence and consent.

[29] As such I find that this principle can be upheld even by including the caveator as an administrator in the administration of late father's estate.

The Principle That The Court Will Never Force Joint Administration

[30] Flowing from the above, the rationale for the established rule that the court will never force a joint administration, is that one dissenting administrator has the power to object to every act of the others and thereby defeat the whole administration

As stated in *Bell v. Timiswood* 2 Phill. Ecc 22:

> The Court never forces a joint administration and for an obvious reason; because it is necessary for the administrators to join in every act, there might be a complete contrariety of action, and it would be in the power of one of them to defeat the whole administration.

Then in *Sanford v. Vaughan* 1 Phill. Ecc. 126 again, it was stated:

> it has been correctly stated that the Court never forces a joint administration because if the administration were at variance it would put an end to the administration.

[31] Like all principles drawn from ancient times, it must be considered circumspectly having in mind the context in which the principle was conceived. *Bell v. Timiswood* was decided on June 20th, 1812. In that case Sir John Nicholl said:

> The interest of Robert Timiswood has been admitted as one of the next of kin: Joseph Bell prays to be joined in the administration with him ... Both are in an equal degree of relationship; no objection is stated to Timiswood; but against Bell it is said that he has been twice a bankrupt, and that the last time there were no dividends.
>
> Surely, if the court has an option (as it undoubtedly has) between these two parties, I shall not think Mr Bell, who has taken such bad care of his own affairs, the preferable person to be entrusted with the management of the affairs of others. One party is unobjectionable; the other is highly objectionable.

[32] It must be borne in mind that the principle was formulated without reference to our s. 30 of the Probate and Administration Act 1959 or even the English equivalent. All that the principle of no forced administration seeks to highlight is the danger of a negative vote.

[33] The court asked itself the question: "What is the greatest harm that can be done by the caveator, who is the single biggest beneficiary in terms of percentage and proportion with respect to the estate's administration, according to the Faraid Certificate produced or a substantial beneficiary nevertheless, according to the petitioners' expert opinion? Sometimes the positive is put in proper perspective when the negative is being addressed. As they say to know what a complex thing is ask what it is not. It had been pointed out by learned counsel for the petitioners, Dato' Vijay Kumar Natarajan, that because of the history of animosity, arising perhaps out of the non-communication between the parties, the caveator would not be a suitable person to be a co-administrator in the administration of the deceased's estate.

[34] Perhaps, at every turn, he might just fold his arms and say, though in not so many words, "Whatever you suggest, I will oppose, and I will keep opposing with the result that the Estate will be frozen forever," and every time when such a thing is done, the petitioners will then have to come to court to apply for directions from the court, incurring much more time and expenses and costs to the estate of the deceased.

[35] The court finds that if the caveator is up to such a course of action, then there will always be remedies available, including penalizing him for costs, as well the petitioners' (the 1st, 2nd and 3rd petitioners) applying to remove the caveator as a

co-administrator, if need be. I think any court of law before whom such an application is made will come down hard on any administrator who would not be giving rational reasons for pursuing or not pursuing a particular course of action with respect to the administration of the deceased's estate. It is to nobody's benefit and certainly no blessing to cause by design or default the estate and its assets to be locked up. This alone should constrain the parties if not compel them to act expeditiously and economically to the end that the estate can be divided and distributed to all beneficiaries. If they have been in opposition to each other as coming from the same father but different mother, then it is time for them to be joined in a common opposition against delay and any dereliction of duty with respect to the distribution of the estate.

The Principle That Majority Interest Will Prevail In The Appointment Of Administrator

[36] In the case of In the *Dalam Harta Pesaka Ngau Ken Lock (Deceased) v. Ngau Voon Kiat* [2002] 1 LNS 144, Ramly J (as then was) also stated:

> It is also an established principle that the court will normally recognise the wishes of the majority of the beneficiaries. Section 30 of the Act clearly envisages that 'in granting administration, the court still have regard to all the persons interested in the estate of the Deceased person'. This principle is both correct and sound. It seeks to achieve maximum harmony among competing interest. In his book *Probate and Administration in Singapore and Malaysia*, the learned author G Raman (at p 74) expressed: Quite often, the court will be required to choose between competing applicants though the applicants may come from the same class. In such instances, the court will look into that section or those numbers of the class who have a larger interest that the competing group. Therefore the majority interest will normally be recognised and granted the letters of representation.

[37] Each case must be decided on its own merits. In the above case the applicant's share in the estate is only 1/6 whereas that of the other beneficiaries including the petitioner is 5/6. The other beneficiaries have also sworn affidavits stating their support of the petitioner applying for administration. The applicant above could not agree to the petitioner being the sole administrator and the petitioner could not agree to the applicant being co-administrator

with him. Here the caveator is agreeable to be co-administrator with the petitioners and further all are beneficiaries of the estate of the deceased. There is no need for the majority to exclude the minority for there is no harm that the minority can do without harming its own interest. Moreover there are avenues in the law for his removal if he proves to be a thorn in the flesh for the petitioners. If there is one party who because of his financial standing would be in more dire need of the benefits, bounties and blessings from the unlocking of the estate of the deceased, it would be the caveator who appeared to have been able to enjoy only an advance of RM2,000 per month from the deceased's family company.

[38] The principle that the majority interest would prevail was also dealt with in *Dampier v. Colson* 2 Phill Ecc 53, where it was held the two children who combined had a majority interest and objected to their sister, would not be forced into a joint administration and would take the grant jointly to her exclusion in view of their majority interest.

see also:

(i) *Elwes v. Elwes* 2 Lee, 572

(ii) *Mercer v. Morland* 2 Lee 498

(iii) *In the goods of Sarah Stainton* [1871] LR 212

[39] In *Iredale v. Ford* 1 SW TR 306, the court held forcing a joint administration upon sisters should certainly be avoided and that the rule was that grant should follow the majority interest, and also bearing in mind there would be sureties, the grant was made in the exclusion of the brother having a minority interest.

[40] The court finds that the principle enunciated and applied must be appreciated based on the peculiar facts of each case. Where the voice of a disenfranchised party ought to be heard and where the harm he can caused is very much buffered by the strength, skills and stature of the petitioners, I fail to see how by including the caveator as a co-administrator would jeopardize and derail all actions that the petitioners want to take with respect to the due administration of the estate of the deceased.

The Principle That The Caveator Is Objectionable To All Other Persons Entitled Under The Estate

[41] The fact that the caveator is objected to personally by all other beneficiaries under the estate is also a factor to be considered. The principle was also discussed in the case of *Dalam Harta Pesaka Ngau Ken Lock (Deceased) v. Ngau Voon Kiat* [2002] 1 LNS 144, where the judge quoted G. Raman in '*Probate & Administration in Singapore and Malaysia; Law & Practice*', where the applicant could be excluded if he was personally objectionable to other persons entitled. The judge also quoted '*Williams, Martimer and Sunnucks Executors, Administration and Probate* (16th Ed, 1982)' at p 324, where it was stated that an applicant may be passed over if he is personally objectionable to other persons entitled to a share in the estate.

[42] In this matter, the petitioners' counsel submitted that the caveator has shown a clear animosity to the petitioners and has made baseless claims of discrimination even during his own father's life time. He has seen fit to make these allegations to the press and has demeaned the family name. Regrettably by his actions, he has made himself objectionable to the petitioners. If at all that is true, I think it is a situation compounded by the non-communication of the parties with one another. If I may say it is at most the action of a desperate man in a desperate situation, fearful that what has been is what will be, being completely kept out in the dark where the administration of the estate of the late father is concerned.

[43] The caveator had also filed on 17 May 2010 a writ action against the petitioners in the Kuala Lumpur High Court Suit S 22-443-2010 where the caveator had prayed for the following assets to be included as assets of the deceased in the grant of the letters of administration to the estate of the deceased:

1. One Third (1/3) share in the estate of Syed Mohamed bin Syed Kechik Al-Bukhary, deceased who was the deceased's predeceased son,

2. 100,002 preference shares in Syed Kechik Holdings Sdn Bhd,

3. 79 ordinary shares in Syed Kechik Holdings Sdn Bhd.

[44] As there is a dispute as to the extent of the deceased estate and assets, it is even more incumbent and imperative that the caveator be included as a co-administrator in the administration of the estate of the deceased so that the said estate be fully and finally administered. The principle of excluding and indeed excising the objectionable party must give way to the principle that would promote greater transparency and help in discovery of the truth of the extent of the deceased's estate and assets. The over-arching principle encapsulated by s. 30 of the Probate and Administration Act 1959 that the court shall have regard to the rights of all persons interested in the estate of the deceased person must be given priority and paramount consideration.

Whether Syariah Law Principle Applies In Deciding Who Has Priority In Administration

[45] Now the court has also been asked to consider the position of the Syariah Law, with respect to whether or not the test should be the same, or the test should be different, as in the fact that it should just be under civil law principle. The court at the end of the day finds that, in essence, there really is not very much difference, in terms of whether one applies the test (with respect to who qualifies to be administrators) under Islamic Law or under Civil Law. At the end of the day, the discretion is with the court with respect to who are the persons and in this case, all are beneficiaries of the estate of the deceased who will be in the best position to administer the estate of the deceased.

[46] Learned counsel for the caveator, Encik Pawancheek Marican, submitted that Islamic Law principles are applicable in the appointment of administrators and that this comes within the proviso to s. 3(1) of the Civil Law Act 1956 which said:

> Provided always that the said common law, rules of equity and statutes of general application shall be applied subject to the circumstances of the states of Malaya and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

[47] Encik Pawancheek submitted that the caveator is entitled to be co-administrator jointly with the 1st petitioner (his stepmother) on the following grounds:

1. The caveator is the only son of the deceased and has a special status under Islamic law which gives him priority as an administrator under the concept of wilayah al mal.

2. Although the 2nd and 3rd petitioners (the caveator's two step-sisters) fall within the same group as the caveator - that is *asabah bi al-graye*r – the caveator's interest in the estate of the deceased at 43.75% is twice that of each of his sisters, and furthermore his is the biggest single share entitlement to the estate among the three. The caveator is thus given priority to be appointed an administrator from this group.

3. The 1st petitioner (the caveator's step-mother) being the remaining member of the war is *ashab-al-furudh* (the Quranic heirs), is entitled to be appointed as administrator.

[48] The above is the view expounded by the caveator's expert, Associate Professor Mohd Ridzuan Awang of the Universiti Kebangsaan Malaysia in his witness statement.

[49] For the part of the petitioners, the views of their expert Assistant Professor Dr Tajul Aris Ahmad Bustami, given in his witness statement are as follows:

1. With regard to the relationship between the son, daughter and wife of the deceased, there is no superiority in degree between Quranic Heirs and Residuary Heirs, only their designated shares are different with one another.

2. Seniority has no place nor gender with respect to who is or are to be appointed administrators. The paramount consideration is justice and what is the best interest of the estate. The relevant authority will decide who is the best suitable person or persons to be appointed as the administrator regardless of age and gender. Appointment by way of consensus *(mushawarah)* is encouraged.

[50] It has been said that where theologians disagree on what the divine law says we should be guided by the adage: Unity in the things essential, liberality in the non-essentials and charity in all things. No sooner had one utter that, theologians may argue anew and afresh on what are things essential and non-essential. For my part one needs only to consider the requirement of having regard to the rights of all persons interested in the estate of the deceased person as provided for in s. 30 of the Probate and Administration Act 1959. Fortunately for us there only four persons involved – the caveator and the three petitioners and there is enough room for all four under s. 4(1) of the Act. I

A cannot see how making all of the four as administrators of the estate of the deceased would cause injury or injustice or be inimical to any one of the beneficiaries.

Problem of deadlock

B **[51]** I was told by counsel for the petitioners that danger looms ahead if the court were to add the caveator as a co-administrator, and that prevention is better that cure, and perhaps sometimes the cure is worse that the disease itself. But this court is hopeful that in spite of whatever differences might be that had caused the C parties to be torn asunder, now is the time to come together for a common good.

[52] To the children of the deceased I say this:

D Your late father had worked very hard to leave behind for you quite a substantial asset. You might not need these for yourself, or for your children, or the children that should come after you, because your father had left behind and given you a good education so that you can succeed in life. Think of the many ways E you can bless others around you because of what your father had left behind for you. The last thing he wanted to see is his children bickering and battling over what he worked hard to achieve and accumulate for the advancement of members of his family and beyond.

F **[53]** This court would urge the parties whenever they cannot agree to act in unison (with respect to the administration of the estate of the deceased) to ask themselves the question, "If father had been around, what do you think he would have asked us to G do, or to consider?" Perhaps, by asking that question, the parties might come to approximately the same answer, if not the same answer.

[54] I realise that, by making the caveator a co-administrator of the estate of the deceased (who is his biological father), might H perhaps at times cause some delay in the decisions that might have to be made with respect to the proper administration of the estate. But that kind of delay is not a problem. That is not insurmountable.

I

[55] I would urge the parties to put their differences aside for the common good that they can do to bless humanity with the wealth that their late father had left behind for them to administer. I trust that the parties will at least start communicating with one another, if not directly, then through their solicitors, with a view to the proper administration of the estate of the deceased, so that they can in turn bless many other people less fortunate around them.

Pronouncement

[56] Thus, the petition for letters of administration is hereby granted to the petitioners together with the caveator, and of course, subject always to all the administrators furnishing, the necessary administration bond and oath or an exemption of it if successfully applied for at the appropriate time.

[57] No order is made as to costs, because this is a family dispute matter, and it is a very sad thing for the court and for all parties to see that children cannot agree on what their late father had left behind for them, whether it be distributed according to one version of Quranic interpretation or another and who should be administrators.

Postscript

[58] The court will seriously challenge the parties, when they cannot agree on the proportion and percentage of distribution of the estate, to perhaps challenge and provoke one another to do acts of charity and good works, and perhaps that portion that the parties cannot agree be given to charity of their designated choice. The court would further urge the parties to, as far as they can, agree to agree. Even if they have to agree to disagree, do so without being disagreeable.

[59] This court hopes that this decision will be the beginning of a new chapter; a new dawn of reconciliation for the children of the deceased, the late Tan Sri Datuk Syed Kechik @ Syed Bakar bin Syed Mohammad.